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The International Community and Antarctica

M.C.W. PINTO*

The author analyzes the conflict surrounding Antarctica and its valuable resources. He concludes that any solution must reconcile the interests of those states claiming special rights to Antarctica with the interests of the growing number of lesser-developed states that are calling for an equitable restructuring of the world economic order. He then proposes utilizing the procedural framework of the United Nations to provide a solution predicated on global cooperation.

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I. INTRODUCTION

Since the beginning of history, the icy breath of Antarctica has kept at bay those who would win its secrets. Even the bold seafaring adventurers of the north, who in the fifteenth and sixteenth centuries inaugurated what European writers have called the Age of Discovery, shunned its treacherous icy wastes.¹ In the frail craft of the times, a journey to Antarctica was too dangerous and unproductive a venture for mariners intent on finding new sources of gold in the Indies.² The following description of an early voyage through the Straits of Magellan is illuminating:

This night the winde began to blowe very much . . . and still increased in fury, so that wee were in great doubt what course to take: to put into the streights wee durst not for lack of ground tackle: to bear sayle wee doubted, the tempest was so furious, and our sayles so bad The tenth of October being by the account of our Captaine and Master very neere the shore, the weather darke, the storme furious, and most of our men having given over to travell, wee yeelded our selves to death, without further hope of succour.³

* Attorney of the Supreme Court of Sri Lanka. The views expressed are the author's and do not necessarily reflect the views of any government.

1. Jane, *The Last Voyage of the Worshipfull M. Thomas Candish Esquire, Intended for the South Sea*, in *THE PRINCIPAL VOYAGES, TRAFFIQUES AND DISCOVERIES OF THE ENGLISH NATION* 234 (R. Hakluyt ed. 1926).

2. *Id.*

3. *Id.* at 248.

Beginning in the eighteenth century, however, improved techniques of navigation allowed intrepid northern explorers to move further into the Antarctic Ocean.⁴ American, British, French, German and Russian explorers⁵ faced and surmounted incredible hardships. These pioneers withstood the relentless, bitter cold, the storms, the diseases and the misfortunes which beset them. They reached the limits of human endurance and the heights of bravery. Their acts of perseverance and self-sacrifice rank among the highest expressions of the human spirit.

The heroic achievements of these explorers seemed to entitle them to claim the lands they discovered in the names of their sovereigns. Nevertheless, it is questionable whether these feats should be sufficient to acquire the Antarctic territories; whether these accomplishments support a principle of law which would secure for all time the land and its appurtenant wealth. It must be determined whether there is a rational nexus between the bravery of this handful of noble men, driven by the relentless pioneering spirit, and the distribution of the wealth of Antarctic resources among their states alone.

The states from which these explorers came answered this question with a qualified affirmative. Discovery provided the basis for many of the claims of sovereignty over Antarctic regions.⁶ These states, however, also recognized that the bravery and endurance of the explorers required reinforcement by a more substantial force provided by the countries themselves. Occupation, as well as discovery, was required.⁷ To secure the new territory, naval power was

4. See generally H. KING, *THE ANTARCTIC* 204-33 (1969).

5. Notable among these pioneers are Frenchmen Bouvet de Lozier, who discovered Bouvet Island in 1739, and Yves-Joseph de Kerguelen-Trémerac, who discovered Kerguelen Island in 1772. *Id.* at 15, 164. Englishman James Cook circumnavigated the globe at a latitude so far south as to show that Antarctica was a separate continent. *Id.* at 204-05. In 1820-21, Russian explorer Thaddeus von Bellinghausen circumnavigated Antarctica itself. *Id.* at 205-06. American sealer Nathaniel Palmer sighted the Antarctic mainland in 1820, and discovered the South Orkney Islands in 1821. *Id.* at 207. In 1902-03, a German expedition under Erich von Drygalski discovered Wilhelm II Land. *Id.* at 220.

6. See, e.g., 1 G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 453-65 (1940) (discussing Norwegian, American, British and French claims based on discovery).

7. "Discovery and occupation" is a longstanding principle of international law. In 1608, a Dutch jurist, Hugo Grotius, wrote:

[N]o one is a sovereign of a thing which he himself has never possessed, and which no one else has ever held in his name . . .

. . . for to discover a thing is not only to seize it with the eyes but to take real possession thereof. . . . [T]he act of discovery is sufficient to give a clear title of sovereignty only when it is accompanied by actual possession.

H. GROTIUS, *THE FREEDOM OF THE SEAS* 11-12 (R. Magoffin trans. 1916).

Where the land in dispute is remote and uninhabited, an absolute standard of pervasive physical presence does not prevail; competing claims of sovereignty have been decided on the basis of relative exercise of rights by the claimants. Legal Status of Eastern Greenland,

necessary in order to "occupy" the lands and solidify claims by establishing and administering outposts.⁸

The states dominant during this period recognized this principle of acquiring territory through discovery and occupation.⁹ Acquisition was possible whether the territory was uninhabited—as in the case of Antarctica—or inhabited by primitive cultures in need of education, social organization and, above all, the true religion—Christianity. Indeed, Christianity provided a powerful new element to support titles acquired through discovery and occupation.¹⁰ The saving of heathen souls was of such universal and preeminent importance that the Church was willing to bestow the New World upon two sovereigns.¹¹ The sovereigns were to administer the new territories in the name of the Church and convert any inhabitants they might find.¹² Thus, the discoverers went forth to find, to teach and to win for Christ—and themselves—the discovered.

The claims of title to various parts of Antarctica were founded on this framework¹³—the bravery of individual explorers, the naval strength and influence of their states and the Church of Rome.¹⁴ They were so claimed then, and they are so claimed today. However, there is a growing body of opinion holding that claims of sovereignty based on such origins have no place in the world today. The contemporary world community, which includes the peoples of many countries that were discovered and occupied in the past or were bequeathed by the Church to the care of some Christian tutor state, views its problems at the global level and strives to arrive at rational solutions.¹⁵ In pursuing that objective, it has adopted a policy of an equitable restructuring of the international economic order, and would like to make cooperation among states a principle superseded-

[1933] P.C.I.J., ser. A/B, No. 53, at 46. See also P. JESSUP & H. TAUBENFELD, CONTROLS FOR OUTER SPACE 140-41 (1959).

8. See P. JESSUP & H. TAUBENFELD, *supra* note 7, at 140-41.

9. *Id.*

10. See generally J. GOEBEL, THE STRUGGLE FOR THE FALKLAND ISLANDS 50-81 (1927). Both Argentina and Chile maintain claims to Antarctica based in part on succession to the Papal Bull *Inter Caetera* (1493). P. JESSUP & H. TAUBENFELD, *supra* note 7, at 145.

11. These states were Portugal and Spain. J. GOEBEL, *supra* note 10, at 50.

12. *Id.*

13. Since Antarctica is uninhabited, we need not discuss here the thorny problem of decolonization. For a synopsis of an interesting oral presentation by Mohammed Bedjaoui of Algeria outlining the complexity of this issue, see Advisory Opinion on Western Sahara, [1975] I.C.J. 30.

14. See authorities cited in notes 7-10 *supra*. National claims of sovereignty to parts of Antarctica have been based also on the sector principle, contiguity and on *uti possidetis*. See P. JESSUP & H. TAUBENFELD, *supra* note 7, at 140-59.

15. See generally, A. FRIEDBERG, THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT OF 1964 (1964); H. SHUVRIE, UNCTAD-II: A STEP FORWARD (1968).

ing the pioneering competitive spirit of an earlier time.¹⁶ An essential aim of this process is the redistribution of the world's resources.¹⁷

II. ANTARCTICA AND THE NEW INTERNATIONAL ECONOMIC ORDER

Can Antarctica, constituting one-tenth of the surface of the world, be excluded from this movement toward a more just, equitable and secure world order? It is difficult to see how such an exclusion could be justified. The landmass of Antarctica is known to contain substantial quantities of oil, gas, coal, iron, copper, uranium and other minerals.¹⁸ These resources have been preserved and remain unexploited not only as a consequence of their remoteness and their availability in sufficient quantities in less hostile environments, but also by virtue of the present absence of technology for extraction suitable for Antarctica.¹⁹ In addition to the abundance of mineral resources, the ice is inhabited by seals and migrant birds.²⁰ The Antarctic Ocean contains the now famous krill in quantities that could eliminate starvation in many countries,²¹ as well as many kinds of fish.²² Moreover, vast reserves of fresh water exist in the form of icebergs.²³

The presence of this wealth of mineral and living resources is not solely determinative of the significance and value of the Antarctic region, nor is it the only factor that contributes to the need to preserve, in its pristine condition, the last of the continents to be untouched by man's insatiable exploitation. Since the relationship between Antarctica and the world's weather is not yet fully understood,²⁴ it is necessary to ensure that there is no interference with its equilibrium, either deliberately or inadvertently, as a result of scientific, commercial or military activities. In this regard, the exclusion of all warlike activities, maneuvers, weapons emplacement or testing of any kind is necessary to preserve the continent as an

16. *See id.*

17. *Id.*

18. H. KING, *supra* note 4, at 80.

19. This, however, may be changing soon. *See generally* Dugger, *Exploiting Antarctic Mineral Resources—Technology, Economics, and the Environment*, 33 U. MIAMI L. REV. 315, 317-20 (1978).

20. *See* Scully, *The Marine Living Resources of the Southern Ocean*, 33 U. MIAMI L. REV. 347, 348 (1978).

21. *See id.* at 352-53 nn.44-50 and accompanying text. The harvestable yield of krill has been estimated to be several million metric tons annually. *Id.* at 347 n.16.

22. *Id.* at 349 nn.28-32 and accompanying text.

23. de Blij, *A Regional Geography of Antarctica and the Southern Ocean*, 33 U. MIAMI L. REV. 299, 307 (1978).

24. *See id.* at 313.

area exclusively for peaceful purposes.²⁵ Additionally, Antarctica has been considered for use as a food storage location.²⁶ It is also visited by increasing numbers of tourists each year.²⁷ Aside from these pragmatic aspects, there are scholastic considerations involved in evaluating the relative benefits of the regulation of activities in Antarctica.

Antarctica is a vast laboratory for many branches of scientific research. These include not only the fields more traditionally associated with the continent, such as biology, geology and meteorology, but also archaeology and anthropology.²⁸ Antarctica is part of one of the great archaeological and cartographical mysteries of all time. The famous Piri Reis map of 1513 shows the landmass of Antarctica with an accuracy only made possible through equipment developed after 1948,²⁹ thus making it difficult to avoid speculation about the existence of a civilization with highly sophisticated mathematical techniques prior to the coming of the ice age approximately eleven thousand years ago.

Viewed from this perspective, it is inconceivable that the regulation and conservation of Antarctica will not assume a position of major significance in this movement toward a new, equitable economic order.

III. THE ANTARCTIC PROBLEM AND ALEXANDER'S PROPOSED SOLUTION

The Antarctic problem, when reduced to its basic elements, is a situation beset with conflict. Presently, seven states have made sovereignty claims to an area comprising approximately five-sixths of the continent.³⁰ Only five of those states recognize their claims *inter se*;³¹ the other claims remain in dispute.³² One hundred forty other states of the world community have given little consideration to the validity of these claims. Furthermore, the majority of those

25. See The Antarctic Treaty, Dec. 1, 1959, [1961] 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71 [hereinafter cited as Antarctic Treaty], art. I (requiring the Antarctic be used exclusively for peaceful purposes).

26. See Potter, *The Antarctic: Any Economic Future?* in FROZEN FUTURE 297-98 (R. Lewis & P. Smith eds. 1973).

27. P. JESSUP & H. TAUBENFELD, *supra* note 7, at 166; Potter, *supra* note 26, at 301-03.

28. See generally P. SIPLE, 90° SOUTH (1954).

29. See C. HAPGOOD, MAPS OF THE ANCIENT SEA KINGS 27 (1971).

30. The states are: Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom. For an excellent historical summary of these claims, see Alexander, *A Recommended Approach to the Antarctic Resource Problem*, 33 U. MIAMI L. REV. 371, 374-75 nn.17-24 (1978).

31. The states recognizing such claims are: Australia, France, New Zealand, Norway and the United Kingdom.

32. The claims of Argentina, Chile and the United Kingdom overlap. See Daniels, *The Antarctic Treaty*, in FROZEN FUTURE 34 (R. Lewis & P. Smith eds. 1973).

states are unlikely to recognize such claims. Two of the Consultative Parties,³³ the two most militarily powerful and technologically advanced states in the world, reject all claims of sovereignty in Antarctica.³⁴

In addition to the problems stemming from the sovereignty claims, the Antarctic situation is complicated by the legitimate concerns of those states not directly involved in the sovereignty dispute. Inasmuch as these states comprise the overwhelming majority of the international community, no satisfactory resolution of the Antarctic situation could be consummated without recognizing their legitimate concerns. These states are determined to establish a new international order based, *inter alia*, on: cooperation rather than competition, assistance to developing countries, one-state-one-vote decisions on all major economic questions, equitable prices for raw material, and the establishment of producers' associations, all with a view toward effectuating a fair distribution of the world's resources.³⁵ As noted in section II above, the Antarctic, with its potential for supplying badly needed living and mineral resources, cannot escape the attention of these states.

In sum, the Antarctic situation is ripe for conflict, and it would seem that early regulation on an international scale is warranted. Against this background, Alexander's search for a solution is both timely and illuminating.³⁶

Initially, Alexander examines the legal status of Antarctica in terms of what he calls "accepted modes of territorial acquisition,"³⁷ which is essentially discovery followed by occupation.³⁸ His detailed analysis of fact and legal precedent asserts that although inchoate titles might have been conferred by discovery in the first instance, they were never perfected through effective occupation and have not gained recognition from the legal community.³⁹ He further asserts that the Antarctic Treaty does not provide a regime for governing resource activities.⁴⁰ As a result of this situation, he concludes that there is no legal order relevant to resource activities in Antarctica.⁴¹

33. The United States and the Soviet Union are nonclaimant Consultative Parties due to their status as contracting parties to the Antarctic Treaty in 1959. See Antarctic Treaty, *supra* note 25.

34. "[T]he United States and the Soviet Union have, in effect, refused to recognize all other claims to sovereignty while reserving the right to make their own claims." P. JESSUP & H. TAUBENFELD, *supra* note 7, at 176.

35. See authorities cited in note 15 *supra*.

36. Alexander, *supra* note 30, at 371.

37. *Id.* at 391.

38. *Id.*

39. *Id.* at 393.

40. *Id.* at 397.

41. *Id.*

Alexander then examines four possible solutions to the Antarctic resource problem. The solutions are: (1) an international approach that would include the entire world community;⁴² (2) recognition of the assertions of sovereignty by the claimant Consultative Parties;⁴³ (3) resolution of the conflicting and disputed sovereignty claims by the International Court of Justice; and (4) a "pooling"⁴⁴ of the claims of the Consultative Parties and a declaration of "Joint Antarctic Sovereignty"⁴⁵ to establish an exclusive but community-oriented jurisdiction over the entire Antarctic region.⁴⁷

Alexander exposes the deficiencies of each approach and the attendant problems to which each solution gives rise.⁴⁸ He then proposes the concept of "Joint Antarctic Resource Jurisdiction"⁴⁹ to create a legal order applicable to resource activities in Antarctica. This regulatory body would include all states qualifying for consultative status under a revised Antarctic Treaty.⁵⁰

Under this plan, a study would be conducted by the Consultative Parties to determine environmental effects of hydrocarbon exploitation. Those areas suitable for commercial activities would be leased to interested states,⁵¹ and revenues generated from the leasing of the areas would go exclusively to the twelve original Consultative Parties on an equal basis.⁵² However, revenues from taxes levied on exploitation would be paid in part to the twelve original Consultative Parties and in part to a trust fund created to aid less developed states and administered by the United Nations.⁵³ Under this scheme, the Antarctic Ocean would retain the status of high seas,⁵⁴ leaving all states able to participate in a new treaty regulating the living resources of Antarctica. The feasibility of this solution will be addressed in section IV below.

42. *Id.* at 409-10. Alexander asserts that it is doubtful that such an approach would be accepted by the claimant Consultative Parties.

43. *Id.* at 410-11.

44. *Id.* at 411-14.

45. *Id.* at 414.

46. *Id.*

47. *Id.* at 414-17.

48. See notes 42-44 & 47 *supra*.

49. Alexander, *supra* note 30, at 417.

50. This would be effectuated through a revision of, or amendment to, the Antarctic Treaty, allowing new states to accede to the Treaty and to qualify for consultative status without affecting any other provision. *Id.* at 418.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

IV. SEARCH FOR AN EQUITABLE SOLUTION

The need to clarify the status of Antarctica is made apparent by its position as the last continent containing an area over which sovereignty claims are not generally acknowledged and an area over which no sovereignty is claimed at all. Any solution to the problem must be acceptable both to the international community, with its diverse interests, and to the Antarctic Treaty parties. The Treaty affords the Consultative Parties the exclusive right to decisionmaking, to acceptance of new members⁵⁵ and to police all portions of Antarctica covered by the Treaty, including unclaimed areas.⁵⁶ However, it is clear that the Treaty is *res inter alios acta*,⁵⁷ and cannot create obligations binding on the overwhelming majority of states in the international community which have in no way accepted, even tacitly, the provisions of the Treaty.

Naturally, if a situation of conflict is to be avoided, it is not enough merely to restate the obvious political situation. Instead, a solution must be found which not only satisfies the interests of the generality of states regarding Antarctica and its resources, but also comes to terms with those states which view themselves as having special rights to the territory.

Alexander's solution attempts to reconcile these interests. His approach, however, is through the existing legal structure of the Antarctic Treaty.⁵⁸ The Consultative Parties and possibly a few other states would, under this scheme, have a dominant role. The remainder of the international community—particularly the less-developed states—would receive some portion of the revenues from mineral exploitation.⁵⁹ The manner and extent of distribution would, presumably, be determined by the Consultative Parties. The latter may, of course, be relied upon to act fairly and in the interests of all concerned. This approach should certainly commend itself to the Treaty parties, although they might prefer to include living resources within such a regime as well.⁶⁰

An approach through the existing Treaty framework may not, however, appeal to nonsignatory states. These countries—particularly lesser-developed ones—may place greater emphasis on community interests than on the special interests of certain

55. Antarctic Treaty, *supra* note 25, arts. IX(1), XII(1).

56. *Id.* art. X.

57. See, e.g., H. JACOBINI, INTERNATIONAL LAW 6 (rev. ed. 1968) (a treaty is only binding on those party to it).

58. Alexander, *supra* note 30, at 417.

59. *Id.* at 420.

60. Alexander's proposal restricts itself to the distribution of mineral resources. Future sharing of living resources would be open to all countries. *Id.* at 418.

Treaty signators. Furthermore, these states will want to ensure that their own specific interests are protected. For example, oil exporting countries will be particularly concerned with ensuring that the oil resources of Antarctica are rationally exploited; states depending heavily on the export of fish-meal and other fish products will want to participate in planning the harvest of the Antarctic seas; and underdeveloped states will want to see the food resources of Antarctica used to feed their starving populations.

In any event, it is doubtful that the international community would be willing to confer a central role on so unrepresentative a body as the thirteen Consultative Parties. One can readily imagine the reactions of the countries in Asia, Africa and the Middle East, which would be virtually excluded from an executive body comprised of Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, Poland, South Africa, the Soviet Union, the United States and the United Kingdom.

V. A PROCEDURAL APPROACH THROUGH THE UNITED NATIONS

The Antarctic situation could be resolved in a manner satisfactory to all interested parties by first bringing the matter before the United Nations⁶¹ for a comprehensive study of the economic potential of Antarctica.⁶² This study could be followed by a resolution before the General Assembly blueprinting an equitable solution. Such a plan could avoid any implications concerning the status of current claims and any attempt to conceptualize the status of the continent. No mention of sovereignty or even jurisdiction is necessary. Instead, the emphasis should be on global cooperation in research and dissemination of information aimed at an equitable and practical approach in which the Antarctic Treaty parties would

61. Attempting to bring Antarctic questions before the United Nations and its specialized agencies is not a novelty. In 1947, the Trusteeship Council received a petition concerning the international control of polar regions but decided to take no action. 15 U.N. TCOR 4, U.N. Doc. T/PET/GENERAL (1947). Proposals for international regimes were made by the United States (1948), India (1956), the Soviet Union (1958) and Great Britain (1958). See P. JESSUP & H. TAUBENFELD, *supra* note 7, at 171-75. Although directly relevant to some of the issues raised at the Third United Nations Conference on the Law of the Sea, discussion of the Antarctic seas has been excluded by these four states. Perhaps these states are anticipating further community interest by offering their new Convention on Southern Ocean Fisheries for ratification before the end of 1978.

62. The Food and Agricultural Organization (FAO) has already produced several excellent studies of the Southern Ocean Fisheries. See, e.g., I. EVERSON, *THE LIVING RESOURCES OF THE SOUTHERN OCEAN* UNDP/FAO GLO/SO/77/1, 1977; G. GRANTHAM, *THE UTILIZATION OF KRILL* UNDP/FAO GLO/SO 77/3, 1977. However, there is some likelihood that efforts will be made to curb FAO activity by asserting that such activity is inconsistent with programs to be carried out under the Treaty. But see Antarctic Treaty, *supra* note 25, art. III(2). It would indeed be unfortunate that controversy might prove fatal to a conscientious public organization's initiatives.

play an important role. Thus, a resolution before the General Assembly might contain the following provisions:

(1) A declaration that would follow generally the lines of the Treaty in affirming that Antarctica is to be used exclusively for peaceful purposes. All measures of a military nature including testing of weapons, military maneuvers and the establishment of military bases would be prohibited, but the use of military personnel or equipment for peaceful scientific purposes would be permitted.⁶³ The declaration could provide:

- (a) for freedom of scientific investigation, requiring free exchange or publication of scientific plans, observations and results;
- (b) that the declaration is not to affect the rights, or the exercise of the rights of any state under international law with regard to the high seas within the area to which it applies;
- (c) that the declaration and any action taken pursuant to it will not affect any claim of sovereignty with respect to part or parts of the area.

(2) Establishment by the General Assembly of a Committee on Antarctica comprised of all the Antarctic Treaty parties, together with fifteen other states, selected on the basis of geographical representation (not more than forty states total). The Committee would be requested to study the information available on Antarctica and its resources. The Committee would then make recommendations to the General Assembly on how best to reconcile the interests of the world community with the interests of individual countries. Since Treaty parties have special knowledge of the area, it would be reasonable to request that they submit to the Assembly an acceptable plan covering environmental protection, resource exploitation—including moratoria or limitations where appropriate—and scientific research.

(3) A request to the Food and Agricultural Organization (FAO) to submit to the Committee on Antarctica, on

63. See Antarctic Treaty, *supra* note 25, art. I(5). The drafters of these provisions should consider the observations of the Treaty made by the Stockholm International Peace Research Institute (SIPRI). *World Armaments and Disarmament*, [1973] S.I.P.R.I.Y.B. 473; *Arms Control: A Survey and Appraisal of Multilateral Agreements*, [1978] S.I.P.R.I.Y.B. 5, 5-6.

an urgent basis, a study of the living resources of the Antarctic Ocean and recommendations aimed at their optimal utilization, bearing in mind that countries experiencing severe protein deficiencies should benefit substantially from such utilization.

(4) A request to the World Meteorological Organization (WMO) and other interested organizations to make proposals to the Committee on possible research programs and the establishment of research stations in the area.

Naturally, because an approach of this nature opens the Antarctic problem to international solution, it may be initially disconcerting to those states currently asserting claims to Antarctica. Nevertheless, this approach ultimately may prove appealing to these countries for the following reasons: (1) since this approach avoids deciding questions of sovereignty, domestic political platforms based on claims to Antarctica will not be disturbed; (2) this approach enables the Antarctic Treaty parties to remain influential while at the same time allowing them to become part of an inevitable movement toward an international economic order; and (3) since there is no attempt to conceptualize the status of Antarctica, no faction can claim the area as a common heritage, thus avoiding ideological confrontation. Other members of the world community will be attracted by: (1) the fact that the problem will be aired in an international forum; and (2) the initiation of community involvement by discussion under the auspices of the United Nations.

Moreover, consigning the problem to the inevitable gradualness of United Nations procedures offers the prospect of a slow defusing of claimant sensibilities. If the past is a reliable indicator, it may be asserted that there is likely to be more gradualness than inevitability in these procedures. The fact remains, however, that the speed and efficiency with which an issue is treated depends on the priority the international community assigns it. Until now, the priority of the Antarctic problem has been low, but as noted in section II, this is rapidly changing.

VI. CONCLUSION

It is interesting to speculate on the type of regime that will ultimately emerge to govern Antarctica. What role, if any, will be assigned to the Treaty parties? Several alternatives have been suggested; none have gained wide acceptance. As far back as 1958, a proposal was advanced giving responsibility to an international or-

ganization.⁶⁴ In the same year another proposal was advanced giving responsibility for Antarctica, not to a single organization, but to several organizations on a functional basis.⁶⁵

Clearly, once resource-oriented activities commence in the area to any appreciable extent, some kind of centralized coordinating—and possibly controlling—authority must be envisaged. One author, concerned essentially with the living resources, has stated:

It seems that the interests of the producers, i.e. the fisheries, and the consumers should be coordinated, in order to achieve a just distribution of the maximum quantity of fish which can be caught without depleting the stocks. Potentialities should be taken into account, a proper division of work according to capacities. This should not be left to the states, but organized by an international body, for instance the FAO⁶⁶

Another writer, anticipating mineral resource activity as well as living resource activity, suggested:

Ultimately some kind of an international bureau will have to be set up, if smooth-running operations are to be secured in complex scientific or commercial endeavours. . . . The more forward-looking and less nationalistic participants in the Antarctic Conference of 1959 realized that the beginnings of such institutions would be desirable even today and may well become indispensable for rational exploration and exploitation in the near future. They were unable to win agreement. They had to fall back on the hope that these can be erected when the time comes.⁶⁷

Has the time come? Are the members of the international community ready to negotiate a rational solution? Are the Treaty parties ready to avoid ideological confrontation in order to establish a practical regime in which all countries may participate? Indeed, in the life of the community, as in the life of the individual, there are times when certain events compel consideration of change, of adaptation and development. Such an evolutionary challenge faces us here, and it is important how states respond. Specific Antarctic Treaty parties have consistently maintained a policy emphasizing restraint in the exploitation of Antarctic resources—particularly mineral resources. This policy indicates a concern on the part of

64. See Goldie, *International Relations in Antarctica*, XXX AUSTR. Q. 25 (1958).

65. For example, fisheries would be the responsibility of the FAO and meteorological studies would be within the purview of the WMO. C. JENKS, *THE COMMON LAW OF MANKIND* 371-78 (1958).

66. Morton, *The International Regime of the Polar Regions*, 107 RECUEIL DE COURS 168, 275 (1962).

67. Hayton, *The Antarctic Settlement of 1959*, 54 AM. J. INT'L L. 349, 368 (1960).

those states for the international community and could serve as the basis for a new, cooperative solution to the Antarctic problem. If, however, other voices prevail, there may be an attempt by the Treaty parties to enhance what they believe are their special relationships with Antarctica. Such an attempt surely will result in confrontation with states holding different hopes for the future of Antarctica.

Confrontation, however, may be a necessary phase and a useful engine of progress in the Antarctic scenario. What is important is that confrontation be managed with skill and imagination so that a just resolution may be found. Neglected, the Antarctic could contribute to the tension between northern industrialized states and the lesser-developed southern states. Approached in a practical way, giving due consideration to the several interests involved and their need for reconciliation, this remote region could become the first area to witness the abandonment of international rivalries, the celebration of interdependence, and the fulfillment of the aims of the Charter of the United Nations.